

**FILED: October 23, 2013**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of W. J. T.,  
a Child.

DEPARTMENT OF HUMAN SERVICES,  
Petitioner-Respondent,

v.

L. A. S.,  
aka L. A. O.,  
Appellant.

Lane County Circuit Court  
05495J

Petition Number  
05495J02

A153914 (Control)

---

In the Matter of A. A. O.,  
a Child.

DEPARTMENT OF HUMAN SERVICES,  
Petitioner-Respondent,

v.

L. A. S.,  
aka L. A. O.,  
Appellant.

Lane County Circuit Court  
11560J

Petition Number  
11560J01

A153915

Eveleen Henry, Judge.

Submitted on September 06, 2013.

Peter Gartlan, Chief Defender, and Valerie Colas, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Cecil A. Reniche-Smith, Assistant Attorney General, filed the brief for respondent.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Duncan, Judge.

DUNCAN, J.

Affirmed.

1                   DUNCAN, J.

2                   In these consolidated juvenile dependency cases, mother appeals the  
3 juvenile court's judgments that changed the permanency plans for her two children, W  
4 and A, from reunification to adoption. Mother asserts that the court erred in concluding  
5 that she had not made sufficient progress toward ameliorating the conditions that gave  
6 rise to the court's jurisdiction over the children. We affirm.

7                   The juvenile court took jurisdiction over the children in February 2012,  
8 primarily because of mother's "use of alcohol and/or controlled substances." In February  
9 2013, the court held a permanency hearing. At the time of the hearing, W was seven  
10 years old and A was approximately 14 months old. As a result of both this case and an  
11 earlier case, W had been in foster care for nearly half of her life. A had been in foster  
12 care for all of his life.

13                  After the hearing, the court issued a permanency judgment for each child  
14 concluding that the Department of Human Services (DHS) had made reasonable efforts to  
15 reunify the family but that mother had not made sufficient progress to make it possible  
16 for the children to safely return home. Regarding mother's progress, both judgments  
17 state:

18                  "Mother is involved in the case and has not made sufficient progress toward  
19 meeting the expectations set forth in the service agreement, letter of  
20 expectation and/or case plan, and the child cannot be safely returned to  
21 mother's care."

22                  The judgments further state:

1 "The case plan of reunification should be changed to a different plan  
2 because \* \* \* notwithstanding the reasonable reunification efforts of DHS,  
3 the child cannot be safely returned to the care of either mother or father at  
4 the time of the hearing, and the evidence does not support a determination  
5 under ORS 419B.476(4)(c) and (5)(c) that further efforts by the agency will  
6 make it possible for the child to safely return home within a reasonable  
7 time."

8 Mother appeals, arguing that the juvenile court did not have authority to  
9 change the permanency plans for the children from reunification to adoption. Changes to  
10 permanency plans are governed by ORS 419B.476. As relevant here, ORS 419B.476(2)  
11 provides that, at a permanency hearing, if the permanency plan is reunification, the court  
12 shall

13 "determine whether [DHS] has made reasonable efforts \* \* \* to make it  
14 possible for the ward to safely return home and whether the parent has  
15 made sufficient progress to make it possible for the ward to safely return  
16 home."

17 On appeal, mother challenges the court's conclusion that she had not made  
18 sufficient progress. We view the evidence "in the light most favorable to the trial court's  
19 disposition and assess whether, when so viewed, the record was legally sufficient to  
20 permit that outcome." *Dept. of Human Services v. N. P.*, 257 Or App 633, 639, 307 P3d  
21 444 (2013).

22 Mother makes two alternative arguments. First, she argues that the state  
23 failed to prove that she had not made sufficient progress for the children to safely return  
24 home *at the time of the permanency hearing*.<sup>1</sup> Second, she argues that, even if the state

---

<sup>1</sup> Specifically, mother argues that, "by the time of the permanency hearing, mother was clean and sober and her children could return to her care." According to mother,

1 proved that she had not made sufficient progress for the children to return home at the  
2 time of the permanency hearing, it failed to prove that she had not made sufficient  
3 progress for the children to return home *within a reasonable period of time*.<sup>2</sup>

4           We reject mother's first argument--*viz.*, that the state failed to prove that she  
5 had not made sufficient progress for the children to safely return home at the time of the  
6 permanency hearing--because it is unpreserved. At the permanency hearing, mother  
7 informed the court that she had been clean and sober for approximately six months, was  
8 employed, and had housing. She had started outpatient treatment but had stopped when  
9 her health insurance stopped paying for it. She was attending AA and NA meetings and  
10 participating in individual counseling. Mother asserted that she was making progress, but  
11 she did not assert that she was ready for the children to return to her care immediately.  
12 To the contrary, she asked for a "90-day extension" to show that she could continue to  
13 make progress. Thus, mother did not preserve her appellate argument that, "by the time  
14 of the permanency hearing, mother was clean and sober and her children could return to

---

"the department failed to present any evidence to prove that mother continued to have a substance abuse problem that endangered the health and safety of her children. Instead it was undisputed that, at the time of the permanency hearing, mother had been clean and sober for roughly six months, was compliant with her outpatient drug and alcohol treatment, and had reengaged in counseling. Further, mother had a job and housing for her children's immediate return to her care."

<sup>2</sup> Mother contends that, "[e]ven if the children could not immediately return home, the department failed to present any evidence that waiting an additional 90 days (as mother requested) was an unreasonable amount of time for mother's children to wait in light of their specific needs."

1 her care."

2           We also reject mother's second argument--viz., that the state failed to prove  
3 that she had not made sufficient progress for the children to return home within a  
4 reasonable period of time--because, even assuming that the state was required to prove  
5 that fact, it presented sufficient evidence to do so.

6           As mother acknowledges, in *Dept. of Human Services v. D. L. H.*, 251 Or  
7 App 787, 284 P3d 1233, *adh'd to on recons*, 253 Or App 600, 292 P3d 565, *rev den*, 351  
8 Or 649 (2012), we held that "there is no statutory requirement under ORS 419B.476 or  
9 any other authority that requires the juvenile court to find that a parent cannot be reunited  
10 with the child within a reasonable time before the court changes the plan from  
11 reunification to adoption." Mother argues that *D. L. H.* was wrongly decided. She  
12 contends that

13           "reading ORS 419B.476(2)(a) in context of the related provisions and  
14 policies of the juvenile code illuminates that the court's central inquiry at a  
15 permanency hearing is whether the department has presented sufficient  
16 evidence to prove that the parent's progress toward ameliorating the  
17 adjudicated bases for jurisdiction is insufficient to allow the child to return  
18 home within a reasonable period of time."

19           The state responds:

20           "There is no requirement that the juvenile court consider whether a child  
21 can safely be returned to parent 'in a reasonable time' when deciding  
22 whether to change the permanent plan for the child from reunification to  
23 adoption. Because the court was not required to make that finding, whether  
24 there is evidence to support it is irrelevant and the court was authorized to  
25 change the children's permanency plans."

26           We need not revisit *D. L. H.* because the juvenile court in this case  
27 considered whether mother had made sufficient progress for the children to be returned

1 within a reasonable time and determined that she had not, and the court's determination is  
2 supported by the record. At the permanency hearing, the court acknowledged that mother  
3 had taken some steps to address her substance abuse problems but expressed concern  
4 about whether those steps justified continuation of the plan for reunification. The court  
5 told mother, "I think you've done some good work \* \* \*. It's a matter of, particularly  
6 with [W,] this [has] really been going on a long time for her, and she can't afford to wait  
7 longer for the court to decide what we're doing here." The court also observed, "It seems  
8 like the time has come and gone to move to the plan of adoption for [W and A]."

9           In the permanency judgments, the court found that mother has a  
10 "longstanding history of substance abuse" and has had "difficulty establishing a stable  
11 lifestyle." The court also found that mother had "engaged in individual counseling on  
12 and off," but, because of mother's mental health and addiction diagnoses, "longer term  
13 therapy is recommended." The court also indicated that mother's progress was belated  
14 and incomplete and, in light of the children's circumstances, did not justify continuation  
15 of the plan for reunification. Specifically, the judgment regarding W states, "Given  
16 mother's relatively recent efforts to engage in only some of her recommended services  
17 and given the child's history, it is appropriate to authorize moving to the concurrent plan  
18 [of adoption]." Similarly, the judgment regarding A states, "Mother has never parented  
19 the child and given her relatively recent efforts to engage in only some of her  
20 recommended services, it is appropriate to authorize moving to the concurrent plan."

21           Thus, the permanency hearing record and the judgments establish that the

1 court considered and rejected mother's claim that she had made sufficient progress for the  
2 children to safely return to her care within a reasonable time. Simply put, the court  
3 concluded that, although mother was making some progress, it was not reasonable to wait  
4 to change the permanency plan. That conclusion is supported by the record, including  
5 evidence of mother's history of substance abuse combined with her belated and  
6 incomplete progress through treatment.

7           Under ORS 419B.476(4)(c), if the court had concluded that "further efforts  
8 [would have made] it possible for the [children] to safely return home within a reasonable  
9 time," the court could have ordered mother to "participate in specific services for a  
10 specific period of time and make specific progress within that period of time." But the  
11 court did not. To the contrary, as set out above, the court concluded that "the evidence  
12 does not support a determination under ORS 419(b).476(4)(c) and (5)(c) that further  
13 efforts by the agency will make it possible for the child to safely return home within a  
14 reasonable time."

15           Affirmed.